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ABSTRACT

The adventure of adventure education comes in the testing of oneself, in putting self against the environment and in striving to overcome the environment through personal skill. Unfortunately, instead of perceiving the risks in terms of physical and psychological challenges, many schools and other organizations perceive them in terms of liability suits. The aspect of legal liability involved in most of the court cases involving the adventure field is that based on negligence, usually defined in five broad areas: (1) personal liability, which results from the actions of an individual with a direct relationship (program leader, volunteer, service person) to the participant; (2) standard of care, in which the appropriate standard of care for a safe environment is not provided; (3) conduct of the activity, in which considerations are made as to the adequacy of instruction, the relationship of maturity and condition to safe participation, and safety rules and regulations; (4) environmental conditions, in which the landowner is held responsible for hazards on his property; and (5) contributory negligence, in which the participant himself must assume responsibility for his own actions. The final portion of this document describes how to handle the sequence of events following an injury and lists four methods of financial risk management (avoiding the activity, insurance, retention of the risk, and reduction of injuries). (DS)

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LEGAL LIABILITY IN ADVENTURE ACTIVITIES

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LEGAL LIABILITY -- ADVENTURE ACTIVITIES

By

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ABSTRACT

Based upon legal principles of negligence, this document presents practical pointers for individuals interested in conducting adventure activities, but who fear for the liability implications. The perception of this fear is the first section. "Who is Liable?" is discussed in terms of the agency, the administrator/supervisor, the leader/instructor, and the volunteer/student trainee. Relationships external to the agency, such as leasor/leasee arrangements, independent contracting, use of private land for activities and limited liability laws, and product liability are briefly described. The standard of care required of those "who are liable" is presented in terms of the general standard of care being that of a "reasonable and prudent professional" and three aspects: supervision, conduct of activity, and environmental conditions. The important element of assumption of risk is analyzed in the section on Participants' Responsibilities. A diagram depicts the role of the leader/instructor, who may become a defendant in a law suit, as the case moves from injury to jury. A program of risk management concludes the document. This program includes four methods: avoidance of risk by choosing not to offer an activity, the transfer and/or retention of financial risks through insurance or retaining the financial responsibility by the agency. and the reduction of injuries through a program of operational awareness of safety procedures and administrative practices.

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PREFACE

This document is for the practitioner who wishes to conduct adventure activities, but is fearful because of the liability implications. It is an effort to present some principles of negligence, some guidelines for the operation of programs, and a bit of philosophy.

This document deals with only one aspect of legal liability, that based in negligence. Most of the suits brought into court in the adventure field allege that the negligence of the leader or sponsoring agency is the cause of the injury to the plaintiff. While there may be some differences among states, generalized principles of negligence only are presented, which will provide a fundamental understanding of the legal components of this field of law. A local attorney should be consulted for specifics unique to a given state.

Further, the legal principles presented are applicable to both public and private agencies, as well as a broad range of activities. The term "adventure activities" should not be construed narrowly, but should include the wide variety of activities encompassed by terms, such as challenge activities, stress-challenge sports, or "risk sports," as well as specific activities, such as rock climbing, caving, whitewater canoeing, ropes courses, and scuba.

An effort has been made to interpret legal principles and formulate operating guidelines to assist in providing programs which will decrease the likelihood of suits being brought against the sponsoring agency. A plan for risk management is recommended.

Perception of Risk

Adventure activities are those experiences, usually utilizing the natural environment, which challenge the capabilities of the participant physically and psychologically. The "adventure" comes in the testing of oneself, in pitting self against environment, and in striving to overcome the environment through personal skill. The resultant exhilaration, when one does indeed achieve, provides a "peak experience." Csikszentmihalyi[1] would say that a "flow experience" has been realized, and that true enjoyment has been attained.

In his book, Beyond Boredom and Anxiety, Csikszentmihalyi discussed the experiencing of "flow" and enjoyment, using rock climbing as one of the activities studied. He stated that a climber with poor skills facing a situation requiring greater skill will be worried, and if the rock face confronting him is a great deal beyond his skill, he will be very anxious. On the other hand, if a climber is skilled, he will be bored with a rock face which presents no challenge, and if very skilled, the climber will in fact become anxious at the lack of opportunity to use his skill. The state of "flow" and enjoyment is felt when the opportunities or challenges of the activity are in balance with the participant's skills and abilities. However, being in balance does not mean "even," but rather that the activity requires the best from the participant. The participant also must continue to develop his capabilities to meet the challenges of the activity. The activity must extend the individual.

It is in the foregoing sense of challenge which calls forth one's best both physically and psychologically. This provides the best opportunity to

challenge the natural environment. This is why adventure activities are called challenge activities, stress-challenge sports, or "risk sports." Adventure activities commonly include rock climbing, caving, whitewater canoeing, and ropes courses. Two characteristics generally indicative of a challenge or adventure activity are that the natural environment provides the challenge and that there is a progression of difficulty which can provide for that matching of activity challenge and individual capability and skill. The level of difficulty in certain rivers and rock faces is an example.

One of the greatest needs in today's society for all age levels, but particularly teenagers and young adults, is to have challenges which call forth their best efforts both physically and psychologically.[2] However, it seems as if school programmers, public recreation agencies, and youth organizations are caught in the "shackles of mediocrity" and fail to provide opportunities which challenge the participants because of the fear of liability suits. Instead of perceiving risk in terms of physical and psychological challenge, it is perceived in terms of risk of liability suits. As a result, "risk sports" are often removed from a program or may, in fact, never even become a part of the program, at least not at the higher skilled levels. The doctrine of assumption of risk is actually more applicable or operative in the higher skilled-level activities than in the beginner-level, so the fear of law suits should actually be less with the higher skilled-level activities.

However, the perception or risk, and thus the fear of liability, is related to familiarity with the adventure activities and the responsibilities at hand. Whereas the recreation programmer rightfully should be concerned with

the leisure needs and interests of the participants and with providing opportunities for growth, challenge, and fun in a safe and healthful environment, the conscientious lawyer is concerned with eliminating the risk elements in programming and with wiping out any trace of the chance of liability. The lawyer's interests are to advise the agency he represents on the safest, most cautious, most conservative path in avoiding the possible pitfalls of an unresponsive jury, an expensive settlement, or an unfavorable court decision. Similarly, because the insurance company's primary concern is protection against a large law suit or many small "nuisance" claims, he will also be very conservative. The perception of risk potential also appears to be related to familiarity with the adventure activity or "risk sport." In fact, a representative of one of the state's largest insurance companies speaking before a state-wide recreation meeting said that any time an agency asks about whether or not an activity is covered or would be covered, a "red-flag" goes up signaling a greater degree of risk, in terms of liability. If there is umbrella coverage for all activities, this insurance representative advised that no special activity requests be made. It should be assumed then that all activities are appropriately conducted under the best professional practices, and therefore would not represent any undue risk of harm to the participants.

Brown[3] studied the perception of degree of risk among recreation personnel, lawyers, and insurance representatives and found the foregoing to be indicated. In 19 "risk sports"[4] the lawyers' perception of risk was high or extraordinary in all but three of the activities. The insurance agents indi-

cated eight activities low risk, 10 as moderate risk, and one as high. The recreation administrators viewed the activities as five with no risk, five as low risk, eight as moderate, and one as high. These same persons were asked to rate whether the 19 activities had greater potential for liability than "traditional programing." The lawyers indicated that all 19 activities had greater potential for liability. The insurance agents said six had greater potential. The recreation administrators indicated four had greater potential, but only one of the four were among the six activities listed by the insurance agents.

It is very important that policy board members, lawyers representing an agency, and insurance company representatives be educated regarding adventure activities: their nature, the safety precautions, the progressions, and the safety record (which is usually very good). This means that safety records must be kept and shared. In one situation, a public agency was ordered to discontinue its adventure program. But after three weeks of presenting the safety record, providing inservice leadership training, etc., all but one portion of the program was reinstated. Too often, it seems, decisions are made on the unfounded fear of liability based in negligence, rather than the professional soundness of the conduct of the activity. Those interested in adventure activities have too long taken the negative approach, letting others "call the plays." A positive approach should be taken because most programs are conducted in a safe manner and expose the agency to no greater liability risk than other activities in the program. Adventure programs are an important element in today's programming and a desirable experience for many.

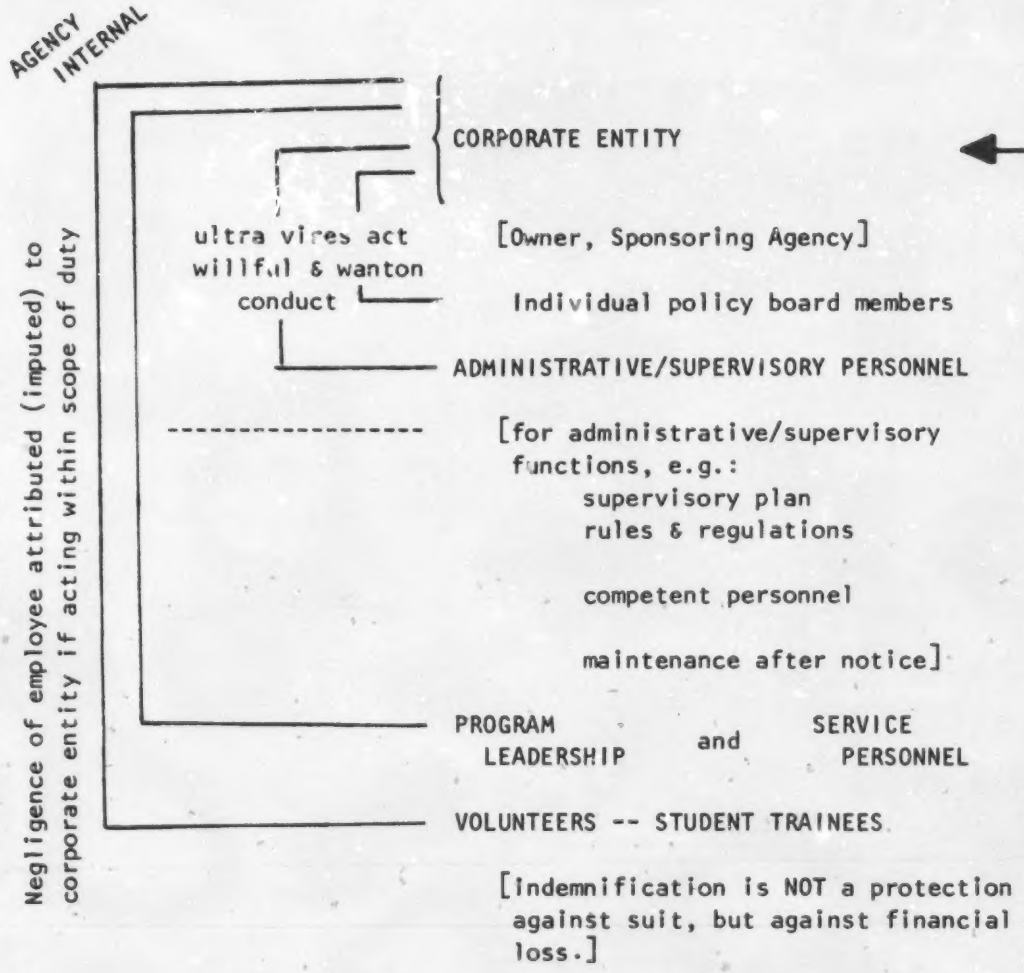
Denial of the opportunity of adventure programs should not be based on an erroneous perception of risk, either risk of injury to the participant or risk of legal suit to the agency.

However, whatever the perception of risk, if adventure activities are to be conducted, they must be conducted in a safe environment. The underlying premise of negligence, the basis of liability suits of the nature being discussed, rests in the responsibility to provide such environment. The first element of negligence is the determination of responsibility for providing the safe environment. Then there is the question of the standard of care exercised by those responsible. Was it adequate to protect the participant appropriately? And, further, if that care was not adequate, was the inadequacy the cause of the injury to the participant?

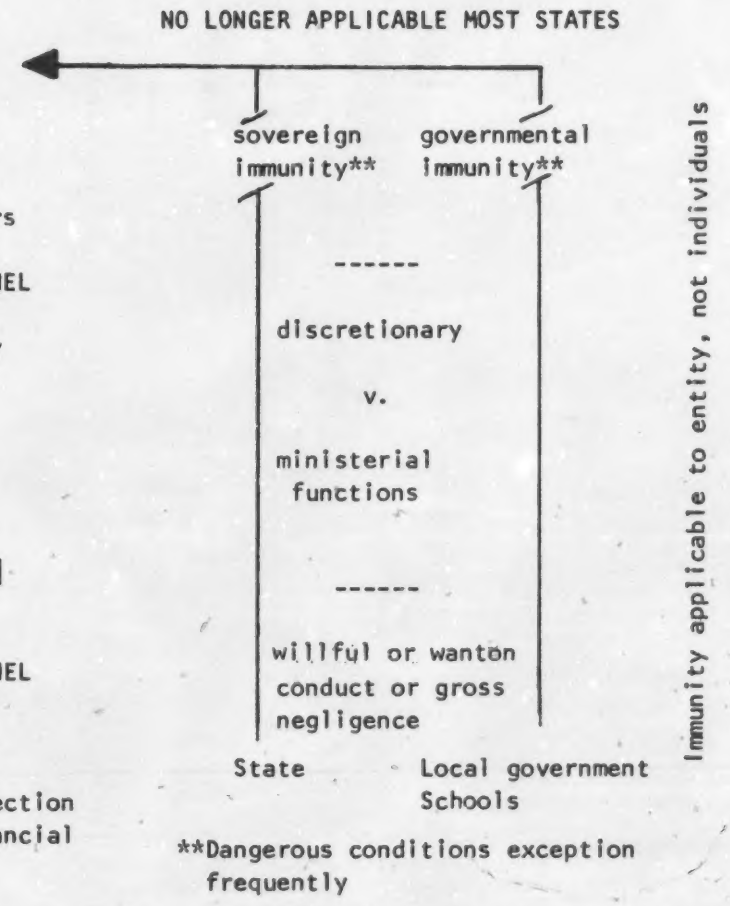
Duty -- Who is Liable?

There is seldom a question of duty owed (incidentally, this is determined by the judge), for if an activity is sponsored, the sponsoring agency is thus responsible for providing a safe environment. There are quite a number of different relationships within an agency concerning liability. This diagram depicts the relationships and attached liability.

Generally, injuries are the results of an action by an individual, who is indicated on the diagram as "Program Leadership and Service Personnel." This is the person who has a direct relationship to the participant, usually face-to-face leadership responsibilities. Certainly this is true with adventure activities. Except in rare instances where there is limited liability


AGENCY INTERNAL
DOCTRINE OF RESPONDEAT SUPERIOR
Negligence of employee attributed (imputed) to corporate entity if acting within scope of duty
CORPORATE ENTITY
ultra vires act
willful & wanton conduct
[Owner, Sponsoring Agency]
Individual policy board members
ADMINISTRATIVE/SUPERVISORY PERSONNEL
[for administrative/supervisory functions, e.g.:
supervisory plan
rules & regulations
competent personnel
maintenance after notice]
PROGRAM LEADERSHIP
and
SERVICE PERSONNEL
VOLUNTEERS -- STUDENT TRAINEES
[Indemnification is NOT a protection against suit, but against financial loss.]

13


NO LONGER APPLICABLE MOST STATES
sovereign immunity**
governmental immunity**
discretionary
v.
ministerial functions
willful or wanton conduct or gross negligence
State
Local government
Schools
**Dangerous conditions exception frequently
Immunity applicable to entity, not individuals

14

or a type of indemnification, the individual program leader or service personnel is liable for his own "wrong-doing," that is, liable as an individual.

In addition to the personal liability of the individual, the employee's negligence is imputed or attributed to the corporate entity. In the past it was the corporate entity, not the individual, which was sued. However, today, regardless of the fact that an individual may have little financial resources, everyone in the agency who may in any way be associated with the injury will be sued. Frequently and desirably, the agency will "cover" or indemnify the employees, including volunteers and trainees, when the injury has occurred in the scope of their duties, by inclusion in the insurance policy of the agency. It should be noted that when an employee performs an ultra vires act, that is, an act outside the scope of duty, or an act which wilfully or wantonly injures another (see diagram), then such employee's negligence is not attributed to the corporate entity, and the employee would not be covered by the agency's insurance policy. Some professional organizations, such as the NEA (state affiliates), AAHPERD, and NRPA, have personal liability policies available for a nominal charge. If an employee is also a home owner, he can usually obtain, at reasonable cost, special business pursuits liability coverage.

Liability of employees does not follow in a direct staff organization line. As indicated in the diagram, the arrows from employees to the corporate entity go direct. Administrative/supervisory personnel become liable (dotted line) when they enhance or facilitate the likelihood of injury. For example, it is an administrative/supervisory responsibility to see that there

is not only a supervisor but also a plan of supervision. This plan must encompass some of the components of supervision. If the lack of proper supervision is a result of an inadequate supervisory plan, then the administrator/supervisor may be as liable as the program leader. The hiring of competent personnel is definitely an administrative function. If the injury is caused by personnel incompetence, and the administrator had reason to know or should have known about such incompetence, then such administrator is also implicated in the liability if the injury was caused by incompetence. For example, in one case, 12 life guards were employed, but none had a current Red Cross or equivalent life guard certificate. Certainly this was negligence and a serious administrative error. Established and enforced rules and regulations are another common responsibility of the administration.

As for volunteers and students, not only are they liable for their own acts of negligence but so is the corporate entity liable for their negligence. It is immaterial whether a person is paid or not paid. If the individual is servicing the program, then liability is attributed to the sponsoring agency. Likewise, the courts do not distinguish between a trainee or beginner/novice and an experienced person because standard of care is established and all who perform the task must meet such standard.

Many agencies sponsoring adventure activities have policy or advisory boards. Are the members of these boards individually liable for injuries which occur during activities sponsored by the agency? Generally, no. Personal liability attaches normally only when there is mismanagement of funds or wilful and wanton misconduct. There appears to be some trend toward

holding board members individually liable for non-compliance by the agency with human rights legislation.

Reference is made (right side of diagram) to sovereign and governmental immunity. This is constantly changing, but few states have total immunity for either the state as an entity or the local government, including schools. The trend appears to be that state legislatures are providing for some recovery by an injured person against the state or local government, but are restricting it in terms of amount of dollars to be awarded and causes of action. The federal government, of course, has the Federal Tort Claims Act, which controls negligence actions. Consult a local attorney for individual state laws. For a brief sketch of each state, read Dr. van der Smissen's book on legal liability.[5] It should be noted that although a state may have some vestiges of immunity, it takes only one case opinion by the court or an act of the legislature to overturn such. Further, frequently an action alleging dangerous condition will supercede such immunity.

There are certain relationships external to the agency which impinge upon liability. These may be categorized into three types of relationships: use of property, independent contractor, and product liability.

Many adventure activities are conducted on private property, and often the owner is reluctant to give permission to use his land/water. In approximately 44 states there are now limited land owner liability laws, which in essence say that a private land/water owner may permit use of his property gratuitously for recreational and educational purposes. This limits his duty to users to that of a "trespasser," that is, only a duty to warn them of

AGENCY
EXTERNAL Who is Liable in Other Relationships?

Use of Property	Independent Contractor	Product Liability
Limited liability laws for use of private lands/waters for recreational use.	+ to shift liability risk	+ inherent hazard in equipment; distinguish negligence in professional's judgment in use of equipment
Leasor liability in rental of areas, buildings, et. al., + must distinguish activity v. premises control	Transportation carriers	Manufacturer
	Guide/outfitters outing sports	Retailer
	Premises repairs	Concessionaire
	Designer/planner	

ultra-hazardous conditions. The critical element in the limitation is that use must be with no monetary gain whatsoever, even a concession stand. Most state laws are similar, but check for specifics.

Another property relationship which makes a difference in liability is that of the leasor-leasee relationship. Generally speaking, injuries which are related to the physical premises are the responsibility of the owner (but the user must also protect the participants). However, if the property is leased for instruction or pleasure and the owner retains no control over the conduct of the activity whatsoever, then the owner is not liable for injuries which result from some activity-oriented, in contrast to premise-oriented, negligence. The sponsor (person) actually conducting the activity must protect (provide a safe environment) the participant from both types of negligence, and is not usually relieved from a premise defect although he is leasing.

In another external relationship, liability may be shifted by using an independent contractor. This is frequently done for adventure activities, for example, by hiring a whitewater outfitter to provide all aspects of the whitewater trip (boats & leadership) or by hiring a stable to provide the horses and instruction (leadership). The most common use of an independent contractor is in contracting for transportation, a bus, van, or other vehicle, to carry participants from one place to another. If the carrier is appropriately chartered by the government, then injuries occurring while being so carried are the responsibility of the carrier. However, if the carrier is not appropriately chartered, then liability also attaches to the agency which hired the carrier. The critical element concerning the shift of liability is that no control

whatsoever is retained, As soon as control is retained, however little, the contracting agency also can be implicated in a law suit.

Product liability is also a concern in the adventure activities field. Product liability essentially involves the design of the product which makes it hazardous and defective workmanship or materials which then causes an injury. Cases have involved, for example, a tent which was supposed to be fire retardant, but wasn't, and a rock pick which broke. The line of liability touches all who are in the chain of retailing, from the principal manufacturer to the final retailer, whether it be the instructor who is selling the product to students or the concessionnaire who makes it available at the "trading post." Ordinarily the instructor or leader who is not selling the product is not held liable on product liability, but may be held liable in negligence for improper professional judgment in selection of the product, either in terms of the quality or suitability of a product for use intended or appropriateness to the users.

The Standard of Care Required

The second element of negligence is that the duty owed is breached by not performing the appropriate standard of care to provide that safe environment. Safe environment and the level of care are frequently defined in the negative, that is, the individual participating must not be exposed to unreasonable risk of injury. What is appropriate or unreasonable is usually what a trial is all about. Expert testimony is given as to what is desirable professional practice. Then, the jury determines whether or not the desirable

practice was in fact performed, and thus, whether or not there was negligence. The sponsor is not expected to be an insurer of safety, and the harm must be reasonably foreseeable. Also, an individual or agency may be liable for both acts of omission and commission, that is, something should have been done to protect and was not, as well as if something was done but done incorrectly. Liability exists for both types of acts.

The generalized principle of standard of care is that of a "reasonable and prudent professional" and asks what are the best practices (requires up-to-datedness) and what would others who are knowledgable and expert in the field do? By accepting a leadership role, a person holds himself to be competent. Therefore, leaders must have the competence required to provide the standard of care necessary for a safe experience. If a leader holds himself qualified to instruct rock climbing, then he is saying that he knows the proper procedures for rock climbing and is competent. Similarly, if he is going to lead a whitewater canoeing trip, then he is saying to the participants (and if minors, to their parents) that he is competent to do so. It is irrelevant whether or not the leader knows the proper techniques and procedures for either rock climbing or whitewater canoeing; the court will hold that he must perform as if he did. Also, the participants have the right to rely on the fact that he does and that he will not subject them to any undue risks. It, therefore, is necessary to be well versed and qualified in whatever adventure activity in which one is engaging. Further, the court does not recognize levels of qualification, that is, it does not have one standard for beginner-leaders and another for those who are experienced. This single standard is

for the adequate protection of the participant.

There are three major aspects of the standard of care: supervision, conduct of activity, and environmental conditions.

Supervision

Supervision of participants is one of the critical elements giving rise to law suits and is of particular importance in adventure activities. In any discussion of supervision, one must first distinguish between general and specific supervision and when each is needed. In general supervision, a person oversees the participants in a given area or activity, while in specific supervision, the person is directly involved with the individuals participating, usually in the instruction of the activity itself.

Whether giving general or specific supervision, there must be a plan of supervision. All staff should know what their duties and responsibilities are and how to go about them. If an administrator notices that someone is not providing proper supervision, then such administrator must take corrective action or he may become liable for failure to have appropriate supervisory practices. The plan should be written, and there should be documentation that the plan was discussed by the staff. The plan should also provide for the number and location of the supervisors (leaders). The person in charge must be immediately accessible.

General supervisors systematically must oversee the entire area of responsibility and be alert for types of situations which might be considered dangerous. Not only should professionals be able to identify such dangerous condi-

tions, but they also must be able to anticipate dangerous situations and teach appropriate safety practices. This takes experience. Normally an activity is not dangerous in and of itself, but becomes so because of the situation or conditions within which it is conducted. The general supervisors' observations should also include noting the condition of participants, such as stressful situations, exhaustion, injury, apparent difficulty with a skill required to successfully complete the activity, and violation of rules and regulations. If potentially dangerous situations are observed, then there must be specific action taken to re-establish safe conditions. The supervisors' responsibilities also extend to curbing rowdiness and enforcing discipline. In most adventure activities there is no place for "horseplay" because a life may be at stake.

Knowledge of first aid and operational emergency procedures is absolutely essential for all leaders. However, the holding of a certificate is not protection from liability. Even in those states with EMT, CPR, and rescue squad limited liability statutes, there is still liability when there is gross negligence or wilful and wanton conduct. Also, the Good Samaritan Law applies only in a few limited situations, because a duty is owed by the leader to render appropriate first aid to the participants. What is actually done in each emergency is the critical element in court. It must be what is right! A person must not only know what to do, but also be able to react promptly. While a certificate is no help in court, it is good to obtain such in that it helps the employing administrator know initial credentials, and, of course, it gives some assurance of what content has been covered. However, it is extremely

important that a regular first aid or EMT course be augmented with special training pertinent to the type of situations in which tne leader is involved. For example, it is necessary to know the emergency care particular to a special adventure activity, such as mountain climbing, whitewater canoeing, and ropes courses. It is the administrative responsibility of every adventure activity director that the staff not only has a first aid refresher course with periodic review within the season, but also an up-to-date briefing on required safety practices. Likewise, emergency procedures should be well established and checked out with the staff periodically. Sometimes it is said that the best thing for a leader to do is "nothing." Remember, however, that a leader is as liable for acts of omission as for acts of commission, and the only time "nothing" is the correct procedure is when that is in fact the proper first aid.

In specific supervision, primarily when direct leadership or instruction is being provided, it is essential that the supervisor (leader) communicate with the participant so that the participant appreciates the activity in terms of his own capacity to do the activity, including both skill and physical conditions. It is also the supervisor's responsibility to be sure the participant understands and adheres to safety practices and procedures. This communication to the understanding "stage" is essential to utilize the assumption of risk defense.

What about groups going "out on their own" without supervision? It has been suggested that perhaps if groups were not officially sponsored that liability could be side-stepped. Generally, if there is any sponsorship whatso-

ever, there is liability for the conduct of the activity. What there may be, however, are special interest groups which work on the principle of common common adventurers. In such situations a group of individuals with common interest in some adventure activity get together without sponsorship. They are co-equals, although each may perform some task to facilitate the activity. The University of Oregon Outdoor Program has a large program based on the principle of common adventurers and has issued a document regarding liability. Write them for further information.

Conduct of the Activity

To date, no law case has been identified which has held as the cause of the injury, and hence liability, the inherent hazardousness of an adventure activity. Instead, liability attaches because of the manner in which the activity was conducted. One might say that liability was caused by "people hazards," not "activity hazards." The principles of negligence are the same regardless of type of activity, the same for playground activities as for ropes courses, for flat water canoeing as for whitewater canoeing, for general swimming as for scuba diving, and for hiking as for mountain climbing. However, the generalized principles must be applied in accord with not only the activity but also the specific situation of the activity. There are no two situations exactly alike and it takes experienced judgment to make the right decisions.

There are three elements in proper conduct of the activity, the first of which is the adequacy and progression of instruction. There is no substitute for personal skill competency in the adventure activities field. Almost all

certification programs for personnel and qualifications for positions dealing with adventure activities designate a certain level of skill competency. There is a considerable body of knowledge in current books dealing with appropriate skills for various adventure activities. Skill clinics and workshops also help to upgrade personal skills. However, there is no nationally recognized leader certification program. Skill competency does provide an experiential base essential for instruction. However, instructors (leaders, supervisors) must have more than personal skill. They must have the ability to analyze the performance of a participant and be able to assist that person in developing the greater skill necessary for the activity to be undertaken. Also, the instructor must be able to assess the skill level capacity and capability of the participants, so that each person may be matched in terms of skill and the challenge difficulty of the adventure activity in which participation is desired. This must be done both for safe performance and for the "flow" experience and enjoyment discussed previously. To be a good teacher is an art.

The leader (instructor) must be able not only to teach a skill in proper progression for a specific individual but also to understand the human being biologically and psychologically. The maturity of participants should be distinguished from the condition of participants. The relationship of maturity and condition to safe participation can be critical in determining liability, and the leader must be able to assess each in respect to the person and specific situation. Maturity is concerned with both the physical development stage and the emotional/mental maturity of participants. Usually these are

characterized by the age of the participants. A young child cannot be expected to exercise the same judgment as an adult, and the leader must take this into account. However, a youth who is experienced in an adventure activity will be expected to exercise greater care and better judgment in protection of himself than another youth, or even an adult, who is inexperienced. As for condition, leaders must be aware of the physical condition of an individual, as well as his emotional state, and adjust activity to provide a safe experience. This assessment requires a great deal of experience in reading symptoms and knowing the degree of intensity of an adventure activity in respect to the natural environment in which the activity is taking place. There appears to be no basis for sex being a factor in appropriate selection of activities. That is, there are no separate adventure activities for men and women. The critical factor is the condition of the individual, whether male or female, plus body build.

Rules and regulations for safety are a must. They are the third element in the conduct of activity. In instruction, it is essential that the participants not only learn the rules and regulations but also the "why" so that they may appreciate the risks involved for violating safety practices. However, to have rules and regulations and not enforce them opens one to liability. Some persons advocate that to set forth detailed rules and regulations or instructional guidelines is not desirable because then the courts will hold the agency to performance of them. It is a dilemma. If you have such and do not abide thereby, one is liable. But, one can also be liable for failure to institute appropriate safeguards. It is recommended to have written rules

and regulations, as well as operating guidelines, but that they not be in such detail, however, as to obviate leader judgment essential in application to specific situations or to be unable to comply therewith.

To illustrate, it is pointed out that spotting on ropes courses is an essential technique for the safety of participants (and avoidance of liability). First one should distinguish between elementary level courses, which resemble creative playgrounds and do not need one-on-one supervision (specific) once a youngster has been familiarized with the course, and difficult level (sometimes referred to as "high") courses, where spotting should be a regular practice. The problem is not so often the failure to spot, but rather the technique of spotting. Just to have an adult or two spotting may not be adequate if there is no instruction on how to spot. The average person assisting is not familiar with spotting. On the agenda of every training program for leaders should be a session on "How to spot." Have a good gymnastics instructor assist in teaching the mechanics of spotting. Further, "over-spotting" on elementary courses can cause undue fear and tension in a child which actually may result in a more dangerous condition and inhibit child development. With simple adventure courses, there should be a complete familiarization of the participants with the different aspects of the course, and then free movement should be encouraged, with the youngsters urged to help each other. Such courses are comparable to creative play and can be so used with general supervision.

Environmental Conditions

Adventure activities utilize the natural environment as the element of challenge, and the courts have been helpful in regard to liability related to this natural environment. Nearly all states have limited landowner liability laws. However, it is interesting to note that the more an owner or occupier does to make property more attractive for human activities, the more likely he is to be held responsible if the property turns out to be unsafe. The advice then is to leave the property in its natural state. The natural environment itself is not normally considered to be unduly hazardous. Even water areas are now being held by the courts to be a known quantity for children. The key to liability on natural areas is hidden peril. A leader should actively seek to learn of such hidden perils or natural hazards before taking a group out. If it is impossible to traverse the area before a trip, then the leader must be knowledgable regarding signs of natural hazards. And, if at all possible, it would be desirable to talk with another leader who has made the trip recently.

Also, one must consider the natural elements when participating in adventure activities. Generally, a leader is not liable when an injury occurs due to a natural phenomenon under the Act of God rule. However, if the leader is not knowledgeable about environmental conditions and leads the participants into a hazardous situation caused by natural elements, there is liability. For example, the leader should know where to pitch a tent where it is lightning, where an area is subject to flash floods, where avalanches might occur on a climb, and where conditions might lead to hypothermia. If

there is extreme high wind or dangerous thunderstorms which might interfere with safe activity, then the activity must be modified so that the participants have no undue risk of injury. If the activity is on the water, the leader must be able to read the wind and waves. In order to assess environmental conditions in terms of safety a person must be not only knowledgable about but also experienced in reading the signs of the natural elements.

Because of the challenge of the natural environment and the natural elements, safety devices and protective equipment are of utmost importance. This includes appropriate clothing, especially shoes. The leader must instruct the participant on appropriate clothing and equipment necessary for safety. Safety equipment provided must be in good condition. A participant does not assume any risks caused by defective equipment. He may sue on negligence in terms of professional judgment of the leader or/and on product liability against the manufacturer or retailer. All equipment should be carefully inspected before each use and if necessary repaired immediately or replaced. Ropes are of particular importance in this respect. Considerable care must be given to correcting any dangerous condition regarding equipment. While maintenance of equipment is important, it is even more important that the equipment be used appropriately, as well as be of proper size and fit for the participant. Equipment should be of good quality so that it will adequately protect the user. Poor quality equipment is a great liability risk. As for use, the equipment must meet the demands of the activity. The staff should review regularly equipment needs and safety techniques for various situations, as well as continually emphasize the need for an attitude which

values safety and care of equipment.

Many people are concerned about accessibility of ropes courses. Is it necessary to fence an adventure or challenge course or post signs? Based upon precedents in playground cases, it would appear that fencing will not protect against liability if the apparatus is found to be defective. Even a trespasser does not assume the risks of defective equipment. However, if the challenge course is in a high density recreation area, there probably should be some impediments. This could be natural rather than fencing and would help those coming into recreation area recognize the type of challenge this presents. It is desirable to set forth at the entries of a challenge course signs which suggest that the course should be used only when supervised by authorized personnel. It is also helpful to have both a sheet of guidelines to hand the participants and some posted guidelines such as: wear appropriate clothing, including footwear (may list appropriate clothing); remove sharp objects from pockets and jewelry which might get caught; have spotters on designated apparatus; indicate safety procedures for specific "stations." Again, mere posting of signs does not protect against liability.

Other retardants to unauthorized use should include making difficult access to rope ladders and swings for "high" courses by placing them high up in the trees and possibly locking them. Low equipment might be considered as playground apparatus and as long as it is in good condition should present no liability problem. What about challenge or ropes courses being an attractive nuisance for children? Generally the elements of attractive

nuisance are: an immature child, usually under age seven; a child trespasser; foreseeable harm to children; anticipated "lure;" and man-made feature. Usually playgrounds are not considered an attractive nuisance.

Participants' Responsibility

While the fear of liability has seemed to place the responsibility for safety solely upon the shoulders of the leader and sponsor of adventure activities, this is not wholly true. Participants also must take some responsibility for their own conduct in engaging in the activity. Two related legal concepts, assumption of risk and contributory negligence, are relied upon heavily as defenses and deal with participant responsibility. They should, however, be distinguished.

The basic premise of assumption of risk is that the person who knows and appreciates the "risks" involved in participation, and goes ahead and participates on his own free will, assumes those risks inherent in the activity. Inherent risks are those dangers normal to the activity, but not those occasioned by the negligence of the leader or sponsor. Contributory negligence, on the other hand, is a negative approach, in which the injured (plaintiff) does something to contribute to his own injury, which if he had not done would either have not resulted in injury at all or at least the injury might not have been as severe.

The test for contributory negligence is whether the plaintiff's conduct under the circumstances was that of a reasonable and prudent person exercising ordinary care for his own safety. An adult is responsible for a certain standard of self-protection, although a leader may stand in loco parentis as

concerns a child's self-protection. However, too many interpret the doctrine of in loco parentis as requiring full responsibility for a child. This is not so. Under the doctrine one must protect a child against severe self-injury. Common contributory negligence acts are those which violate the instructions of the leader or the rules and regulations set forth. To emphasize the importance of obedience, it is recommended that a statement regarding adherence to rules and regulations and following the directions of the leader be placed in any statement to be signed by the participant (if a minor, his parents).

The nature and extent of the responsibility the participant assumes under the doctrine of assumption of risk are on a continuum, involving both age and experience. While age, as evidence of maturity, may be a factor as to responsibility assumed (e.g., as related to water bodies), age alone certainly is not the determinant. The more experienced and skilled a person is in the activity, the greater the assumption of risk. A youth with several years' experience might be held to assume greater responsibility for himself than an adult with no experience in an adventure activity such as rock climbing. Therefore, rather than the more difficult and demanding adventure activities being of greater liability risk to the sponsor and leader, just the reverse is true. If only those who have the appropriate skill and experience are allowed to participate, they assume most of the risks inherent in the activity, because they are knowledgable of the conditions under which they participate and the nature of the activity and its requirements of them.

The greater peril in sponsoring activities is with the beginners, who realize neither their own capabilities nor the demands of the activity. Competent leaders are necessary then to communicate to the beginner a realistic view of his own abilities and the nature of the activity. The courts in recent years have established a demanding standard in this regard. The Restatement of Torts[6] states: "Under ordinary circumstances the Plaintiff will not be taken to assume any risks of either activity or condition of which he is ignorant. . . must not only know facts but also comprehend and appreciate danger itself."

The leader must instruct and supervise in such a way that the participant appreciates the activity in terms of his own capacity to do the activity, including both skill and physical/emotional condition. The leader must be sure that the participant understands and adheres to safety practices and procedures. Understanding means knowing the "whys," as well as the probable consequences for failure to adhere to such practices. Then, if the individual participates voluntarily he is said to assume the risks, that is, those risks inherent in the activity, not risks due to negligence of the leader or defective equipment. It is recommended that any signed statement also include a section on the nature of the activity, as well as an affirmation regarding the fitness of an individual to participate.

Can an individual relieve a sponsor of negligent liability and assume all risks? Can a parent? No. Parental permissions, activity release forms, and participant waivers of liability are ineffectual. A person cannot give permission to another to be negligent toward him. It is against public policy

to do so. A person must be able to rely on the supervision and instruction of the leader and the safety of the equipment and physical area provided. Theactivity must be conducted in a safe manner in an environment which does not cause undue risk of harm. A person who signs, regardless of what the document says, accepts only those risks integral to and normal of the activity, of which he is knowledgable and appreciates the danger. Why, then, is a signed statement so common? First, because many people believe they have signed away their rights, they hesitate to bring suit. Actually, signed statements have no legal authority. Second, signing does make the participants more aware of the type of activity in which they intend to engage.

Signed statements are recommended as a public relations device (so that parents are more aware of what their child is participating in), as well as an affirmative act on the part of the participant regarding the seriousness of his responsibility for himself. However, statements should be carefully drafted to be correct. Three elements should be included in the statement: a description of the nature of the activity; an affirmation regarding physical condition suitable for participation, as well as medical information (such as bee stings, medication, and allergies) necessary for the safety of the participant; and a declaration of obedience to the instructions/directions of the leader and the rules and regulations set forth for safety purposes. Two example forms are in the appendix. One (see appendix A), with only slight modification, is a form used by the Department of Recreation and Leisure Studies, California State University, Northridge, as an activity release and health

statement form for their backpacking, mountaineering and wilderness survival programs. The other form (see appendix B) relates more to the recognition of the situation than the physical condition of the participant and was drafted by a judge for a specific program.

When an Injury Occurs

When an injury occurs there is a sequence of events which takes place. Often a leader is unaware of his role in these various events. The diagram on page 30 depicts the role.[7] Once an injury occurs, the immediate concern is for first aid and emergency treatment for the injured. Improperly executed first aid can not only make the injury worse (such as improper moving resulting in the victim becoming a quadraplegic), but can also result in a bad public relations situation which might cause the injured (and parents) to sue. Under better circumstances the party probably would not sue.

What is said to the family and media, as well as what is put on the accident report form, is critical to the case. One should be aware of this and say as little as possible. Agencies often have a public spokesman. At no time should an opinion be given regarding the cause of the injury, for it might be held later as admission of negligence. Only selected factual information should be released. The accident form is important not only for evidence but also in case the injured does not sue for a number of years. A minor has the right to sue after he has reached majority (18 or 21 years of age, depending on the state). However, depending on statute of limitation laws in that state, the restriction on number of years to bring suit after reaching majority will vary. The accident form should be completed as soon as

ACTIVITY PARTICIPATION

INJURY

CORP. ENTITY
and/or INSURANCE
ATTORNEYS TAKE OVER
[You have no control]

Accident
REPORTS
Insurance
Liability
Accident

BEWARE

+ Media
+ Family

IMMEDIATE STEPS:
First Aid
Emergency Procedures
Notify Parents
Hospital

(*UNSUCCESSFUL SETTLEMENT)

LEGAL ACTION IN COURT

Court of Claims

VISIT

PLAINTIFF'S ATTORNEY

Accident insurance pays medical expenses

THREATENS TO FILE SUIT

FILES NOTICE OF CLAIM

PREPARATION (by attorneys)
+ Facts
+ Applicable cases & statutes
+ Depositions
+ Expert witnesses
+ Exhibits (physical, graphics)

FILE BRIEFS WITH COURT

[Purpose of plaintiff to tear you down!]

Help your attorney

***OUT-OF-COURT SETTLEMENT**

① Insurance Company — $ → Injured

② Injured → $ ← Insurance, Plaintiff's Attorney

ACTION NOT SUSTAINED -

1 Statute of Limitations
Notice of Claim defect

2 Improper party sued
(no duty owed)

3 Governmental/sovereign immunity (discretionary-ministerial function)

4 "Good Samaritan" immunity

WHO IS LIABLE?

Negligence imputed to Corporate Entity (doctrine of respondeat superior)

? administrator, supervisor

③ Arbitrator, Insurance, Pl. Atty, $, Injured

TORTFEASOR

DEFENSES:

* Alleged negligence "wasn't" negligence
  - not proximate cause
  - was intervening cause
* Assumption of risk; contributory negligence
* Non-medical immunity (CPR, EMT) & no gross negl. or wilful/wanton misconduct
* Not foreseeable harm; act of God; unavoidable accident
* No actual/constructive notice
* Volentia non fit injuria; implied consent
* Corp. entity—ultra vires act by tortfeasor; gross negl. or wilful/wanton misconduct

BASES OF ACTION:

* Duty owed; invitee, licensee, trespasser
* Standard of care no appropriate (misfeasance)
* Altho immunity, gross negligence; dangerous condition
* Las clear chance doctrine
* In loco parentis doctrine
* Strict liability doctrine

JUDGMENT

NO AWARD—no negligence found

AWARD—negligence found

plaintiff gets total amount
comparative negligence—
plaintiff gets only %

tortfeasor indemnification

JURY finds facts . . .

JUDGE gives "instructions" to jury —
this is the law, so if find — then —

Doctrine of stare decisis

J. PL. DF. JURY

possible after the accident and should contain facts only. In addition to the complete name of the injured (and the parental information), the names and addresses of several key witnesses should be obtained. Five aspects should be included when describing the accident:

1. Sequence of activity (e.g., at end of session, beginning, midway; what had preceded in terms of type of activities)
2. Location (e.g., where did the accident occur in relation to space; diagram, if appropriate; where were the leader/instructor and other participants)
3. Just exactly what was the injured doing and how did the accident occur? What was going on? Who was involved?
4. What could/should have been done by the injured to have prevented the injury? What cautions or instructions had been given prior to the injury if any (do not indicate that none had been given)? If appropriate, ask the injured what he could have done to prevent the injury. (Might have been contributory negligence.)
5. Procedure followed in rendering aid.

Do not put any opinion of the form as to what you believed the cause of the accident might have been. Do not in any way infer negligence by the leader or sponsoring agency. Make only oral recommendations for changes (procedures, equipment, etc.) to avoid similar accidents in the future. A separate statement apart from the official accident form may be written if necessary. It is suggested that an agency not make an immediate change that might be construed as admission of bad practice and hence negligence. An agency should review regularly in staff meeting its procedures for continuing improvement, so that a single accident is not pin-pointed. Also, accident forms should be analyzed periodically to assess any patterns in injuries occurring, so that appropriate changes might be made.

Once the emergency care is rendered and the accident form completed for the agency, usually the incident is referred to the insurance company and the agency's legal counsel. As indicated on the diagram, the role of the leader becomes minimal in terms of process. Further action is handled by the attorneys. Young leaders who have had a suit filed against them find that the most difficult aspect is the professional denegration which occurs, for the plaintiff will endeavor to show by whatever means possible that the leader did not perform the appropriate standard of care. The leader must control his own emotions, and difficult as it might be to have these things said, he must endeavor to maintain his psychological balance and assist his attorney in any way possible.

As the case proceeds, there may be a settlement by the insurance company, regardless of fault, as a nuisance claim. That is, that it would cost more dollars to carry on with the case than to pay off. Or, there may be a settlement of considerable proportions, again based on the economics of the situation. In a few situations a third party arbitrator may be used to determine appropriate settlement. However, if the case proceeds to court, depositions may be taken and an attorney with expertise related to that specific activity may be brought in. If the case comes to trial, undoubtedly there will be expert witnesses for both the plaintiff and defendant, and it will be up to the jury to determine the facts of the case and whether or not the defendant (leader) was negligent.

If negligence is found, then the plaintiff may receive the whole amount or if there is comparative negligence (in states recognizing same) only a

portion of the award. If insurance is carried and the award is not over the amount covered, the insurance company will pay the award.

Risk Management

What every agency wishing to sponsor adventure activities wishes to do is minimize both the risk to the injured by providing a safe environment and the risk of financial loss. Generally there are four methods of financial risk management. The first of these is avoidance, that is, the agency just does not want to assume any responsibility for the activity and, thus, does not offer it as part of its program; it avoids the activity. For those who believe in the values of adventure activities, this is not an acceptable approach.

A second method of financial risk management has two components. The first is most common, that of transference or taking out insurance so that there is a paid premium for a certain amount of coverage, and the insurance company takes the greater financial responsibility. Of course, premiums are based, theoretically, on experience with claims as related to that specific category of activity. Unfortunately, premiums have increased extensively, and in many instances to the point where the sponsoring agency feels it can not any longer offer the activity. The second component of insurance is to shift financial cost to the user or to a leasee. In such instances the participant is asked to pay, as part of his fee for participation, a certain amount for insurance coverage, or a leasee is asked, in order to be able to use equipment or an area, to provide evidence of liability insurance coverage. The

state and federal governments, in some locations, are now requiring such evidence. This man mean that certain individuals and organizations are unable to use the natural environment owned by the government. In light of previous statements regarding the hazards inherent in natural environment, one wonders if this is not unnecessarily crying "wolf" and causing restrictions on very desirable activity. Financial responsibility may be shifted by using independent contractors, who then carry the insurance on the activity. This is often done in relation to whitewater canoeing and horseback riding.

The third approach to financial risk management is that of retention, that is, the sponsor retains the risk, either in part or all. This is commonly referred to as "self-insurance." However, this is technically incorrect, because insurance itself implies transfer of risk, and one cannot transfer to himself. Injuries which occur infrequently, but may be of quite severe proportions, usually covered by insurance. But, injuries which occur frequently, but cause relatively small losses when they do occur, or injuries which have both low frequency and low severity, are usually covered through the agency retaining such costs as part of their own budget. There are a number of ways to provide for such costs, such as funded reserve (especially if there is coverage of injuries normally handled through insurance); non-insurance, but placement in the budget of an expense item for losses due to such injuries; and deductibles, where the smaller losses are covered from the budget and insurance is obtained for the larger amounts (sort of a "major medical" plan).

The fourth approach to risk management is in the control of the frequency and nature of incidents causing injuries and is referred to as reduction. The aim of this approach is to reduce injuries. Most agencies utilize several approaches to risk management. Whether or not insurance is carried or risk money is provided for through retention, every agency should have a plan of reduction. A basic systematic plan for reducing injuries should be instituted through the policy board of the agency and implemented throughout the organization. A summary of such a plan, based upon the legal principles previously discussed in this document, would include, but not be limited to, the following aspects. The listing is not in any order of priority.

1. A procedure for accident emergencies, including a complete accident form, should be established. The forms should be analyzed regularly. All personnel should be well-trained in first aid specific to the activities which they are conducting.
2. A plan of supervision, both general and specific, must be established. It should include how to supervise. Competent personnel must be employed.
3. Safety rules, regulations and procedures should be established and enforced. There must be an attitude that safety is paramount.
4. Inservice education of personnel must be instituted with emphasis upon:
   a. developmental needs and capabilities of participants
   b. first aid and emergency procedures
   c. safety awareness and safety procedures for activities
   d. how to supervise

   (It is assumed that the technical skills will be there as part of the employment of competent personnel, although certainly there must be continual upgrading of these technical skills.)

5. Regular inspection of facilities, areas and equipment with an efficient program of maintenance, especially preventive maintenance and identification of hazards, is a must. Program personnel must be taught how to inspect, and the frequency of inspection must be set.

6. Programs should be based upon:
   a. progression of activities in accord with human development, skill and experience, and disabilities
   b. sufficiency of leadership and equipment appropriate to the level of activity
   c. desirable safety and instructional practices set forth by specialists (recognized organizations)

7. A good public relations program should be established. This may include carrying of accident insurance to pay medical bills. (Accident and liability insurance should be distinguished.)

8. Consult a negligence lawyer and your insurance broker (agent). Find those professionals who will help you do the program which you would like. Help educate them to the activities and the safety of participation.

There are a number of organizations, such as the Association for Experiential Education and the American Camping Association, as well as some private and public organization, who are concerned about the liability associated with adventure activities. They are seeking to develop not only personnel competency requirements but also safety practices and procedures.

Philosophically . . .

Liability fear must not dictate programs. There must be a way to deal with society and its affinity for suing. It must be recognized that suing is now a way of life, and the best defense is a program of excellence and quality leadership. Also, it must be recognized that suits cannot be prevented by changing or avoiding activities. If the eustress (the pleasurable stress

which gives "peak experiences") phenomenon is as important to people today as many think, a way must be found to deal with liability. And, this way appears to include being the finest professional possible in conducting activities, emphasizing to the participants their responsibilities for their own safety, and "selling" society on the value of these activities to society.

APPENDIX A

CALIFORNIA STATE UNIVERSITY, NORTHRIDGE
Department of Recreation & Leisure Studies

ACTIVITY RELEASE & HEALTH STATEMENT FORM

BACKPACKING
MOUNTAINEERING
WILDERNESS SURVIVAL

This activity requires participation in field exercises which are, by their nature, physically demanding. Therefore, all participants must be free of medical or physical conditions which might create undue risk to themselves or others who depend upon them. In addition to being more exposed than usual to weather changes, you may travel long distances with limited food in mountains at elevations of 5,000-10,000 feet. Furthermore, medical attention may be several hours to a day away in case of emergency. Thus, you should only participate in these outings if you are free of any physical disability. Physical strength is not necessary, although good condition will increase your enjoyment of the outing activities. If there is any doubt about your ability to safely participate in the field activities, you should have a physical examination.

1. What physical disabilities or conditions do you have which might limit your participation in this activity? _____

   _____

2. What else might affect your participation? _____

   _____

3. What medication are you taking? _____

4. What special dietary restrictions do you have? _____

   _____

5. Do you have any allergies? _____ If so, please indicate them below:

____ Penicillin	____ Horses	____ Dust, Hay
____ Wasps	____ Frostbite	____ Others, list _____
____ Bees	____ Foods	_____

I have read and understand the nature of the physical demands of this activity. I have noted above any medical or physical conditions I have which might affect my activities. I therefore release any and all rights or claims for damages against The California State University and Colleges, and all individuals assisting in instructing and conducting these activities, for any and all injuries, loss or damage suffered by me at, or in any way connected with, these injuries.

Name (PRINT) _____

Signature _____

Recreation Course Number _____ Semester _____ Student's Age ____

APPENDIX B

FORCE 12 PROGRAM
AGREEMENT UNDER SEAL (Requires Notary Public Seal)

WHEREAS, the undersigned (the "Applicant") wishes to be accepted for participation in a FORCE-12 trip to be organized and conducted by the faculty of Newton North High School; and, in consideration of Newton North High School's action in allowing the Applicant to participate in such trip:

The undersigned acknowledge(s) the said FORCE-12 trip will necessarily subject the Applicant to certain stresses and hazards, not all of which can be foreseen. It is fully understood that the Applicant may spend several nights outdoors. Reasonable precautions will be taken to protect the student. It is understood that unforeseen circumstances may occur in trips such as are proposed, for which the instructor or Newton North High School cannot be held responsible.

The undersigned assumes all of the ordinary risks normally incidental to the nature of the trip, including risks which are not specifically foreseeable.

The undersigned applicant hereby releases Newton North High School, its faculty and agents from all liability of any nature for loss or damage to personal property. The undersigned applicant further releases Newton North High School, its faculty and agents from all liability for personal injury resulting from the failure of the undersigned applicant or other students on the trip to obey safety regulations and directions of the trip leader, or resulting from the exercise of judgment by the trip leader in good faith in response to emergencies and exigencies which occur on the trip; provided, however, that nothing contained herein shall excuse any member of the faculty or person assigned to be a trip leader by a member of the faculty from the responsibility to act with reasonable care for the safety of the undersigned applicant during the course of the trip appropriate to the circumstances.

It is the intention of the undersigned that this agreement will be governed by the laws of the Commonwealth of Massachusetts.

Executed this day of , 198 , under seal:

_____
Applicant

_____
Parent or Guardian
(if student is under 19)

_____
Witness (Notary Public)

Student's Name -
Address -
Phone -

Source: Mr. Chris Jones
Newton North High School
360 Lowell Avenue
Newtonville, Mass. 02160

FOOTNOTES

[1]Csikszsentmihalyi, Mihaly. Beyond boredom and anxiety. San Francisco: Jossey-Bass, Publishers, 1975.

[2]For discussion of the nature of high adventure and its meaning, see Meier, Joel F., editor, Leisure Today, special issue on "High Adventure Leisure Pursuits and Risk Recreation," insert in JOPER, April 1978. Available separately from American Alliance of Health, Physical Education, Recreation, and Dance (AAHPERD), 1201 16th St., N.W., Washington, D.C. 20036.

[3]Brown, Barbara A. Issues related to municipal recreation agency involvement in the provision of risk recreation opportunities. Master's thesis. University of Waterloo, 1978.

[4]Automobile racing, freestyle skiing, hang gliding, ice boating, luge, minibiking, motocross racing, motorcycle racing, mountaineering, rock climbing, scuba diving, skateboarding, ski jumping, snowmobile racing, soaring, sport parachuting, trampolining, wind surfing, whitewater kayaking.

[5]van der Smissen, Betty. Legal Liability of Cities and Schools for Injuries Relating to Recreation and Parks. Cincinnati: Anderson Publishing Company. 1968 with 1975 supplement. 1980 revision.

[6]American Law Institute. Restatement of the Law, Second. Torts. Philadelphia: The American Law Institute, 1974.

[7]Not all aspects shown on the diagram are covered in this document. For further explanation, see your attorney or the book (revised 1980) cited in footnote 6.

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